

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 98-394

June 16, 1998

GARDINER WATER DISTRICT  
V STANLEY WASHUK  
Appeal of Consumer Assistance  
Division Decision dated  
May 22, 1998 CAD # 4315

ORDER ON APPEAL

WELCH, Chairman; NUGENT, Commissioner

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## **I. SUMMARY**

Gardiner Water District (GWD) appeals a decision of the Commission's Consumer Assistance Division (CAD) related to a complaint filed by GWD customer Stanley Washuk. The question before the Commission is whether GWD had the authority to bill Mr. Stanley a \$10 service fee. We affirm a portion of the CAD decision and dismiss GWD's appeal without further investigation.

## **II. BACKGROUND**

Mr. Washuk lives in Connecticut and owns rental property in Gardiner, Maine. Mrs. Benoit is a tenant of Mr. Washuk. Mr. Washuk is responsible for paying the water bill for the rental property to GWD. On January 29, 1997, Mrs. Benoit called GWD to report that she heard a loud noise and then discovered she had no water. GWD went to Mr. Washuk's rental property to inspect the premises. GWD found that the water had been shut off by plumbers who were working at the property. On February 6, 1997, GWD billed Mr. Washuk a \$10 service charge for GWD's visit to the property.

On February 18, 1997, Mr. Washuk called GWD to complain about the \$10 service fee. On March 2, 1997, Mr. Washuk filed a complaint with the CAD to dispute the fee. On May 12, 1998, the CAD found that Mr. Washuk did not have to pay the service fee. On May 22, 1998, GWD appealed the CAD's decision to the Commission.

## **III. DECISION**

The CAD found that GWD did not have a rate schedule in effect at the time of the service call that would allow such a fee. GWD did not have in effect a rate schedule allowing for a service fee, for a problem that was not GWD's responsibility, until December 1, 1997.

Under 35-A M.R.S.A. § 309, "it is unlawful for any public utility to charge, demand, collect or receive, for any service performed by it within the State,...any rate, toll or charge not specified in the schedules." 35-A M.R.S.A § 304, requires public utilities to file these schedules with the Commission. GWD billed Mr. Washuk a \$10 service charge on February 6, 1997 - almost a year before the rate schedule for such a service fee became effective. The other issues raised by the CAD do not need to be addressed because this one issue, GWD's lack of authority to bill a customer a \$10 service fee, resolves this case. We uphold the CAD's decision that GWD must abate to Mr. Washuk the fee and any late charges assessed on that fee.

GWD in its appeal claims that the Commission's rules do not govern the \$10 service fee because the service fee is a "jobbing fee" (Chapter 62 § 2(B)) and is for a "non-basic utility service" (Chapter 81 § 2(L)). We disagree. The service fee does not fall within Chapter 62 § 2(B), "Advance Payment for Utility Jobbing." This section of Chapter 62 governs a utility's doing work outside the scope of its regulated utility service at the customer's expense, and requires the customer to make an advanced payment for that service. This case is about work that falls within the scope of the regulated utility service. Second, there was no advanced payment by the customer; Mr. Washuk did not even know about the tenant's requesting the utility's service until he received a bill for such service. The service fee also does not fall within Chapter 81 § 2(L), "Non-Basic Utility Service." This section of Chapter 81 defines non-basic utility service as residential service that meets any of the listed conditions. Those conditions define non-basic utility service as a rate or charge that the Commission does not regulate, or a rate or charge for a service that is not contained in the utility's tariff.<sup>1</sup> Both of these conditions are not met as they relate to the service fee charged to Mr. Washuk. As discussed above, visiting a customer to determine why there is no water is clearly a service performed in connection with the provision of utility service, therefore requiring a rate schedule under 35-A M.R.S.A. §§ 309 and 304. Thus, Chapter 62 § 2(B) and Chapter 81 § 2(L) are inapplicable to this case.

Mr. Washuk also complained about being billed for a service call he did not authorize. GWD claims its policy is to accept repair requests from tenants, even though they are not responsible for the bill. In its appeal, GWD argues that under

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<sup>1</sup>The third condition, Chapter 81 § 2(L)(c), need not be discussed because it is about service for merchandise or equipment -- an issue not raised by the service charge for a customer visit from GWD to investigate why there was no water.

the doctrine of agency, the tenant can request the repair call and the district can lawfully charge the customer/landlord for the call, if the problem is found to be the customer's responsibility.

The normal practice of water utilities is to contact the customer, in this case Mr. Washuk, before responding to any service complaint. If the customer is unreachable and an emergency situation (or a potential emergency situation) exists, then the utility proceeds to make the service call.

In response to GWD's agency argument, we find that utilities should first contact the responsible customer and if such contact fails then it is reasonable for the utility to rely on the representation of the affected tenant. Here Mr. Washuk asks that repairs not be made without his authorization. GWD had offered not to respond to problems on his property, if Mr. Washuk sends a notarized letter making such a request. GWD's request for a letter reasonably resolves Mr. Washuk's concern.

We further find that the part of the CAD's decision that required GWD to inspect its records and similar service fees, refund such fees and issue a report to the Commission on its actions is unnecessary, particularly given the amount of time that has passed since the violation.

Therefore, we affirm the CAD decision that Mr. Washuk is not liable for the service fee because GWD had no authority to bill him such a fee, but we do not require the District to review its records to determine if other customers were charged such a fee. Accordingly, GWD's May 22, 1998 appeal is dismissed, without further investigation.

Dated at Augusta, Maine this 16th day of June, 1998.

BY THE ORDER OF THE COMMISSION

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Dennis L. Keschl  
Administrative Director

COMMISSIONERS VOTING FOR: Welch  
Nugent

## NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of adjudicatory proceedings are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 6(N) of the Commission's Rules of Practice and Procedure (65-407 C.M.R.11) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which consideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320 (1)-(4) and the Maine Rules of Civil Procedure, Rule 73 et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320 (5).

Note:The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.